IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 17TH NOVEMBER 2006 / 26TH KARTHIKA 1928

Crl.MC.No. 749 of 2004(C)

CC.343/1997 of JUDICIAL I CLASS MAGISTRATE COURT-II, ATTINGAL
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PETITIONER:
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1. ABDUL SALAM, S/O. NOOR MUHAMMED,
ZAMEENA MANZIL, THOTTAKKAVU CHATHANPARA,
MANAMBUR VILLAGE (A1)

2. SUHARA BEEVI, W/O. ABDUL SALAM,
ZAMEENA MANZIL, THOTTAKKAVU CHATHANPARA,
MANAMBUR VILLAGE (A2).

3. ZAMEENA, D/O. ABDUL SALAM,
ZAMEENA MANZIL, THOTTAKKAVU CHATHANPARA,
MANAMBUR VILLAGE. (A3)

4. MUHAMMED HANEEFA,
S/O. ASSANARU PITCHA, PROPRIETOR,
DELHI TAILORS, KEEZHUVALLOM VILLAGE (A4)

5. MOHAMMED RAFEEQ, SURAJ MANZIL,
ATTINKUZHI, VETTUROAD, KAZHAKOOTTAM (A5)

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR

RESPONDENTS:
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1. NIZAR, S/O. MYTHEEN PITCHA,
PUTHENVEEDU, PATTATHINMURI,
THONNACKAL VILLAGE, THEMBAMMOODU,
PULLAMPARA VILLAGE.

2. THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY ADV. SRI.S.ABDUL RAZZAK
SRI. K.G. BHASKARAN, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 749 OF 2004

Dated this the 17th day of November 2006

ORDER

The petitioners, who are accused 1 to 5 in the private complaint filed in the court of Judicial First Class Magistrate II, Attingal with respect to the offences under sections 143, 147, 148, 149, 323, 324, 447, 427, 294(b) and 452 IPC have sought for setting aside the proceedings of the court below in taking cognizance of the matter. It is submitted that the allegations against the petitioners are that on 25.07.1998 at 8.30 am, they reached the house of Shyla Beevi, the wife of the complainant, in a maruti car and A4 and A5 beat the complainant with stones and A2 and A3, mother of his former wife and the former wife committed mischief by causing damage to the articles. It is mentioned in the complaint that the matter has been reported to the police on 30.07.1998, but the police did not register a crime which was known to the complainant subsequently. Thereafter on 18.12.2000 a private complaint has been filed vide C.M.P.

8015/2000 which was referred for investigation under section 156 (3). The police submitted the refer report to the court.

2. It is submitted by the counsel for the petitioner that the proceedings have been initiated with the sole intention to harass the petitioners to have the s.498 A case (C.C. 343/1997) wherein the first respondent was found guilty and convicted is somehow compounded or to settle scores and to wreak vengence. It is particularly pointed out that the alleged incident is dated 25.07.1998 and the present complaint is filed on 14.2.2003 after five years. The M.C. 105/96 filed by the 3rd petitioner under section 3 of the Muslim Women (Protection of rights on divorce) Act has been allowed and he has been ordered to make payments vide order dated 10.11.2000. The appeal and revision in all the above cases are pending. According to the counsel, the circumstances itself would indicate the motive behind the filing of the present petition.

3. Both sides were heard.

4. Annexure C is the copy of the refer notice dated 01.04.2001. But the first respondent refused to receive the same. The petitioners have also produced refer report of the police wherein it is mentioned that the number of persons living in the vicinity of the house of the 1st respondent were questioned by the police and nothing incriminating could be revealed and that the police inferred that the motive is only to harass the petitioners on account of the grudge that the defacto complainant has been entertaining on account of the proceedings for the offence under section 498 A and as he has been ordered to pay amounts in the M.C. case. It is subsequent to the adjudication of the above proceedings by the trial court that the present complaint has been filed. The version of the first respondent as can be seen from the copy of the complaint is that they had actually intimated the police immediately after they went to the hospital but the police mis represented that FIR has been registered and it is much subsequently that it was known that no such crime has been registered and thereafter on 18.12.2000 a private complaint has been filed. The refer notice has not been received by the first respondent, it is mentioned. It is also

mentioned that the first respondent and his present wife were treated as O.P. at the Government Hospital. It appears to me that it is quite unlikely that the first respondent would not have pursued the matter after allegedly intimating the matter to the police especially at a time when he was under trial for the offence under section 498 A and also as he was facing the proceedings in M.C. under the Muslim Women (Protection of rights on divorce) Act 1986. As the above proceedings were pending it is quite unlikely that the petitioners who included the former wife, her mother, father and brothers could have gone to the house of the accused/first respondent and manhandled his new wife.

In the circumstances, it appears to me that the proceedings are on the basis of fabricated allegations. In the result the Crl. M.C. is allowed. The proceedings pending before the court below as C.C. 343/1997 in the court of Judicial First Class Magistrate, Attingal is herewith quashed.

K.R. UDAYABHANU, JUDGE.

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